

REMARKS/ARGUMENTS

Pending claims 1-23 stand rejected under 35 U.S.C. § 101 for double patenting in view of U.S. Patent Application No. 10/643,672 ('672 Application). However, the pending claims are distinct from those in the '672 Application. Attached hereto as Exhibit A is a copy of the claims, as filed, for the '672 Application. (Exhibit A was retrieved using the United States Patent and Trademark Office's Patent Application Information Retrieval.) The claims in Exhibit A are not the same as pending claims 1-23. Applicant respectfully notes that the differences in the originally *filed* claims and the *published* claims of the '672 Application are likely the result of a publishing error. Accordingly, the double patenting rejection is overcome.

The specification is objected to because it lacks a "Summary of the Invention." However, such a section is not required by statute or rule. *See, e.g.*, 37 C.F.R. § 1.73, which states that such summary "should precede the detailed description." Thus, such a summary is not required. This rule further contemplates the optional nature of the summary: "[s]uch summary, *when set forth...*" *Id.* (emphasis added). Thus, Applicants respectfully decline to include such a summary.

Pending claims 7-9, 13, 15, 19, and 21-23 stand rejected under 35 U.S.C. § 112 because they include the terms "similar" and "similarity", which are indefinite. Definiteness of claim language must be analyzed, not in a vacuum, but in light of "[t]he content of the particular application disclosure" and "teachings of the prior art." MPEP 2173.02. Regarding the content of the specification, the terms "similar" and "similarity" are addressed at length at, for example only, pages 13 and 14. Regarding the "teachings of the prior art", Applicant respectfully notes that "similar" and "similarity" are used *throughout* the Jain reference (e.g., claim 3)—a reference the Examiner asserts constitutes prior art. Accordingly, the claim terms "similar" and "similarity" are definite and therefore, the § 112 rejection is overcome for claims 7-9, 13, 15, 19, and 21-23.

Pending claims 1-23 stand rejected under 35 U.S.C. § 101 as nonstatutory subject matter. A claim constitutes statutory subject matter if it is directed towards one of the enumerated subject matter categories—process, machine, manufacture or composition of matter. Claim 19 recites: "memory" and a "processor." Thus, claim 19 is directed towards an enumerated subject matter category (i.e., not a judicial exception such as a law of nature, natural phenomena or

abstract idea). Furthermore, a claim constitutes statutory subject matter if the claimed invention “transforms” an article or object. Original claim 1 and amended claims 9 and 15 all teach “partitioning a database.” In other words, they teach the transformation of a database and therefore constitute statutory subject matter. In addition, a claim constitutes statutory subject matter if the claimed invention produces a useful, concrete and tangible result. Again, claims 1, 9, and 15 recite “partitioning a database.” This claim element is specifically recited in the claims and constitutes a useful, concrete and tangible result. The resultant partitioned database, as appreciated by those of ordinary skill in the art, improves, for example, computational efficiency in the fuzzy logic field, and this is, in itself, a substantial final result. Further still, claims 9 and 15 have been amended to recite “outputting a portion of the solution set”—a useful, concrete and tangible result. For the above reasons, the § 101 rejection is overcome for claims 1, 9, 15, and 19 and their dependent claims.

Claims 1, 19 and their dependent claims stand rejected under 35 U.S.C. § 102 in view of U.S. Patent No. 6,121,969 (“Jain”). To anticipate a claim, a reference must disclose every element of the claim. Jain does not anticipate claims 1 or 19 because it does not disclose every element of the claims. Claim 1 recites, in part, the following: “partitioning a database...based on...similarity analysis of a measure of the object images to a first threshold.” Claim 19 recites: “memory containing instructions...to partition a database...based on...similarity analysis of a measure of the object images to a first threshold.” Thus, claims 1 and 19 recite partitioning a database. Jain, however, does not. Instead, Jain teaches: “[T]he steps of (i) manually selecting with the new criterion...(ii) machine searching and ordering, [and] (iii) machine displaying...” (11:50-57). During the searching and ordering step, the following occurs: “[a] similarity measure labels *each image in the database* with the distance from the referent” image. (23:60-61). Thus, Jain discloses labeling “each image in the database.” Considering “each image” is labeled, the database has evidently not been “partitioned” as recited in claim 1. Furthermore, the Jain database is not partitioned based on a “first threshold.” Accordingly, the § 102 rejection is overcome for claims 1, 19 and their dependent claims because the asserted reference does not disclose every element of the rejected claims.

Claims 9, 15 and their dependent claims stand rejected under 35 U.S.C. § 102 in view of Jain. Claim 9 has been amended to recite: “partitioning a database corresponding to object images into a plurality of sets based on fuzzy logic.” Claim 15 has been amended to recite

instruction to: "partition a database corresponding to object images into a plurality of sets based on fuzzy logic." Thus, for the same reasons the § 102 rejection is overcome for claim 1, the § 102 rejection is also overcome for amended claims 9, 15 and their dependent claims.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

Date: _____

June 30, 2006



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